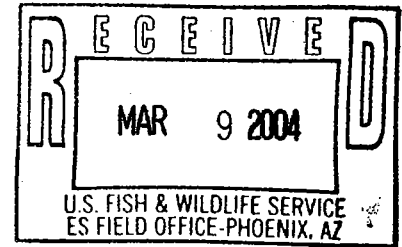




**Chandler, Arizona**  
*Where Values Make The Difference*

G-005 R1



**VIA E-MAIL (WIFLcomments@fws.gov)**  
**and FACSIMILE (602-242-2513)**

March 8, 2004

Steve Spangle  
Arizona Ecological Services Field Office  
U.S. Fish & Wildlife Service  
2321 West Royal Palm Road  
Suite 103  
Phoenix AZ 85021

RE: Comments by the City of Chandler on the Preparation of Designation of Critical Habitat for the Southwestern Willow Flycatcher

Dear Mr. Spangle:

The City of Chandler, Arizona, offers its comments regarding the January 21, 2004 U.S. Fish and Wildlife Service ("Service") Notice of Scoping Meetings and Intent to Prepare an Environmental Assessment for the Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher (69 Fed. Reg. 2940-2943). Chandler's surface water supplies are derived from the Salt River, Colorado River and Verde River watersheds. Designating the Southwestern Willow Flycatcher critical habitat in these watersheds could have an adverse affect on Chandler's water supply and the 200,000 residents Chandler serves. City staff offers the following comments for your consideration. WIL

The Salt River Valley Water Users Association and the Salt River Project Agricultural and Improvement District ("SRP") have submitted comments in response to this Notice. Chandler shares SRP's concerns that the methodologies and criteria used to identify critical habitat and to exclude certain areas from that designation, comport with the requirements of the Endangered Species Act and the National Environmental Policy Act. The City concurs with SRP's approach to the critical habitat designation.

Staff would like to highlight three areas of concern to Chandler: (1) the nature of the scientific inquiry required to evaluate critical habitat for designation; (2) the scope of the economic analysis required; and (3) treatment of lands already covered by an incidental take permit or a habitat conservation plan. CH15  
E8  
PR15

The designation of critical habitat should be based on sound scientific reasoning. Before habitat is designated as critical, it must be scientifically demonstrated that the habitat is "essential to the conservation of the species," 16 U.S.C. §1532(5) and there is a high probability the land designated as critical habitat will provide habitat which meets required criteria. For instance, the mere presence of flycatchers frequenting an area does not make the area critical habitat; it must be scientifically demonstrated that this area is essential to the conservation of the species. CH15

Mailing Address:  
Mail Stop 413  
PO Box 4008  
Chandler, Arizona 85244-4008

**Municipal Utilities Department**  
**Environmental Resources**

Telephone (480) 782-3582  
Fax (480) 782-3415

Location:  
215 East Buffalo Street  
Chandler, Arizona 85225



Mr. Steve Spangle  
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March 8, 2004

Chandler believes the designation of a 100-year flood plain as the potential habitat for the Southwestern Willow Flycatcher is not based on sound scientific reasoning. The 100-year flood plain is determined using watershed runoff characteristics, stream channel shape, stream channel material, and a hypothetical rainfall event. There are many stretches of the Salt and Verde Rivers that are within the 100-year flood plain that could not support flycatcher habitat because the deep groundwater cannot support the trees and shrubbery required for suitable habitat. Also, portions of the flood plain may be scoured out too frequently to maintain habitat on a year-to-year basis. If the 100-year flood plain is used, there must be a scientific linkage between the hydrology/hydraulics of the 100-year flood plain and the potential for the land to support habitat.

LX5

Chandler would also like the Service to use meaningful economic analysis in its decision-making process. Economic impacts should be assessed on the immediate area and not conducted on a regional basis. For example, consider a situation in which designating critical habitat was to severely impact a small town of one hundred residents. If the economic impact were assessed on a statewide or regional basis, the economic impact would appear to be small when compared to the State of Arizona. However, the local impact could devastate a way of life for that small rural community. Chandler recommends the Service conduct the economic impacts analysis on a local basis.

E21

Areas covered by existing flycatcher-specific incidental take permits should be excluded from designation as critical habitat because incidental take is permitted in those areas and has already been mitigated. One such area is Roosevelt Lake in Arizona. However, in those cases where a management plan, such as a habitat conservation plan, provides for the purchase of lands, which will be permanently managed as flycatcher habitat, then these mitigation lands, arguably, should be considered for designation as critical habitat.

PR15

The City believes that by using sound scientific reasoning and meaningful economic analysis, critical habitat that will benefit the Southwest Willow Flycatcher can be designated. At the same time, the Fish and Wildlife Service can realistically evaluate and consider alternatives to determine critical habitat so that potential negative impacts on the citizens of the Southwest will be minimized.

E18  
CH15  
W16

We appreciate the opportunity to offer our comments to you

Sincerely,



Doug Toy, P.E.  
Water Resources Engineer

xc: Val Danos, AMWUA  
Tom Buschatzke, City of Phoenix  
Paul Cherrington, Salt River Project  
Cindy Haglin, City of Chandler



G-006 R1

# City of Phoenix

OFFICE OF THE CITY MANAGER

March 4, 2004

Steve Spangle  
Field Supervisor  
Arizona Ecological Services Office  
U.S. Fish and Wildlife Service  
2321 West Royal Palm Road, Suite 103  
Phoenix, AZ 85021

Re: Notice of Scoping Meetings and Intent to Prepare an Environmental Assessment for the Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher

Dear Mr. Spangle:

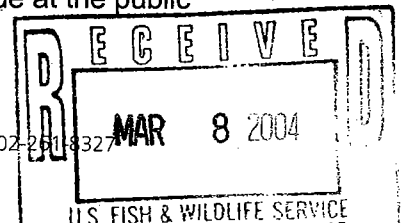
On behalf of the City of Phoenix ("City") I welcome the opportunity to submit the following comments on the above-referenced Notice published on January 21, 2004 in the Federal Register ("Federal Register Notice").

The City of Phoenix has a keen interest in the designation of critical habitat for the southwestern willow flycatcher ("flycatcher"). The City is the largest domestic water provider in the State of Arizona and provides water to over 1,300,000 people and related commercial and industrial enterprises. Phoenix derives 90-95% of its water supplies from surface water sources. The designation of critical habitat for the flycatcher has the potential to adversely affect those water resources. It is imperative that this NEPA process identify and evaluate alternatives that include any potential impacts to Phoenix' source waters, including the Salt, Verde and Lower Colorado River systems, and to the economic impacts on the City that may occur because of any designation. The City believes that a timely finalization of critical habitat designation is important and will provide much needed guidance as it carries out its obligations to provide water to its citizens and fulfills requirements to comply with the Endangered Species Act.

W19  
E18

I understand that you are under a court mandated deadline to publish a final critical habitat designation by September 2005. However, I urge you not to short circuit any of the NEPA requirements to accelerate the process because of that deadline. Failure to fully comply with the requirements of NEPA will only raise the specter of continued litigation over the designation of critical habitat. Such an outcome is of no benefit to any of the interested parties. In that regard, I believe that the extensive geographic nature of potential flycatcher critical habitat together with the courts ruling giving rise to the designation process, mandate the preparation of an Environmental Impact Statement rather than the Environmental Assessment contemplated in the scoping notice. I also suggest that given the importance of this issue it is appropriate for the Service to publish a scoping report that addresses both the comments made at the public meetings and those comments received by the Service on this issue.

PR32



Steve Spangle  
March 4, 2004  
Page Two

This NEPA document must provide a range of alternatives that results in options for designating more or fewer areas as critical habitat but that also meet the conservation requirements required by the Endangered Species Act.

The City is primarily concerned that all of the following three issues be examined: (1) the economic impacts of the designation; (2) consideration of existing, draft or in-progress management plans including Habitat Conservation Plans ("HCPs") and Safe Harbor Agreements ("SHAs"); and (3) the biological approaches that advance the conservation of the flycatcher. I will discuss each of these issues in further detail.

W19  
PR18  
W21

First, the economic analysis must not use the incremental or baseline economic approach invalidated by *New Mexico Cattle Growers Ass'n v. U.S. Fish & Wildlife Service*. Instead a meaningful, quantitative, defensible analysis of the economic impacts of the proposed designation must be performed. In addition to the economic guidelines required by the proposed designation of critical habitat under the ESA, NEPA imposes an independent obligation on the Service to analyze socioeconomic impacts. The Service must compare the economic costs imposed by the designation and the benefits obtained so that areas where the costs outweigh the benefits may be excluded from the designation. NEPA also requires an analysis of cumulative and indirect effects. Any designation that limits the City's water supply so that a replacement supply is needed must look at the adverse impacts that may occur from the use of that replacement supply. The City suggests using the framework for economic analysis contained in Attachment 1.

E21

Second, special management plans such as HCPs and SHAs create benefits for the species they cover. The Service should evaluate the merits of each of these plans in the context of whether the benefits of including lands in the designation outweigh the benefits of excluding those lands. For example, these plans may provide greater conservation benefits to the species when protection of mitigation lands, which may be designated as critical habitat, replace lands with no conservation benefits. Please note that the Service may exclude special management areas from critical habitat designation, based on its analysis of the benefits and burdens resulting from such exclusion, after publication of the proposed rule.

PR18

The Federal Register Notice requested information regarding the existence of special management plans. The City is in the process of completing two SHAs. One is for the Rio Salado Environmental Restoration Project and the other is for the Tres Rios Ecosystem Restoration Project. Both of these SHAs specifically address land management practices that will benefit flycatchers through improvement of the minimal habitat that exists in the baseline conditions. The City believes that the best alternative for benefiting the flycatcher in this instance ties to the operation and maintenance of these projects.

Third, it is important that the Service's analysis in this NEPA document recognize that critical habitat refers to specific areas that contain the biological and physical features that are essential to the conservation of the species. The Service must identify and evaluate alternatives that recognize that variations in biological and physical features will occur across the large

LX5

Steve Spangle  
March 4, 2004  
Page Three

geographic area being considered for inclusion as critical habitat. The Service must avoid applying the type of generic standards exemplified in issue #6 on p. 2941 of the Federal Register Notice. Similarly, assuming that the dynamic nature of riparian habitats can be covered by designating the lateral extent of the 100-year floodplain as critical habitat does not allow for a "hard look" at the relationships between riparian habitat and stream geomorphology.

For example, parts of a 100-year floodplain may be capable of supporting regeneration of habitat but other parts of the floodplain may be permanently severed from the groundwater table and thus incapable of ever supporting riparian vegetation that might support flycatchers. The NEPA analysis must be detailed enough to identify and exclude those areas. Other biological factors exist that implicate the ability of habitat to support flycatchers. Some geographic areas will be able to support more or less flycatchers and the ability to support flycatchers will change over time. Those factors must be specifically analyzed to determine if a given area is essential to the conservation of the flycatcher.

While it is difficult to assess the potential scope of a NEPA document when no preferred alternative or other alternatives have yet to be identified, the Service's linkage to the Southwestern Willow Flycatcher Recovery Plan does provide a reasonable starting point. However, the Recovery Plan can not be substituted for the NEPA analysis for the critical habitat proposal. The Recovery Plan itself points out that, "although the Technical Subgroup has developed a roadmap for recovery by delineating recovery and management units and recognizing important areas within those units for conservation of the species it is not the Technical Subgroup's responsibility to designate critical habitat." (Recovery Plan at O-4, response to Issue #11.) It is evident from this statement that the Recovery Plan was not intended to be used to designate critical habitat. The Service must further refine the analyses and conclusions reached in the Recovery Plan to reduce the scope and extent of the geographic areas identified in the Recovery Plan when designating critical habitat. I urge you to consider my comments herein as part of that process.

Sincerely,



Tom Buschatzke  
Water Advisor

attachment

Swfchnepascomingcomments.docr/data/tom

Elements of an Appropriate Economic Analysis

1. Use a cost-effectiveness framework that is designed to find the least-cost means to designating critical habitat. E21
2. Identify the most essential habitat with the least economic costs.
3. Regional, local and near-term economic impacts must be analyzed and not discounted because the impacts may be small or insignificant on a national level.
4. Direct economic impacts to the affected party must be determined.
5. Indirect impacts, conceptualized as lost "value added", must be determined.

City of Tempe  
P. O. Box 5002  
255 E. Marigold Lane  
Tempe, AZ 85281  
480-350-8207  
www.tempe.gov



Water Utilities Department

March 4, 2004

Steve Spangle  
Field Supervisor  
Arizona Ecological Services Office  
U.S. Fish & Wildlife Service  
2321 W. Royal Palm Road, Suite 103  
Phoenix, Arizona 85021

Re: City of Tempe's Comments on Notice of Scoping Meetings and Intent to Prepare an Environmental Assessment for the Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher

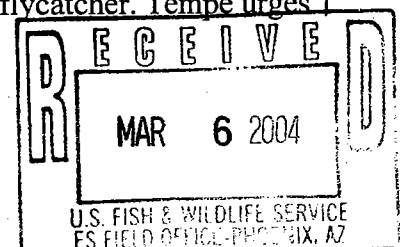
Dear Mr. Spangle:

The U.S. Fish and Wildlife Service issued a notice of scoping meetings and intent to prepare an environmental assessment for the proposed designation of critical habitat for the southwestern willow flycatcher in the Federal Register on January 21, 2004 (Federal Register Vol. 69, No. 13/2940-2943). The City of Tempe would like to take this opportunity to submit the following comments on the above-referenced notice.

The City of Tempe has a significant interest in the designation of critical habitat for the southwestern willow flycatcher. The City of Tempe provides domestic water service to over 170,000 people and a large concentration of commercial, industrial, and institutional water users within the Tempe water service area. Tempe derives over 95% of its water supplies from surface water sources, including the Salt, Verde and Colorado River systems. Approximately 85% of all lands within the Tempe water service area have rights to use water stored in the original conservation storage space at Roosevelt Dam and other Salt River Project reservoirs on the Salt and Verde River. Additionally, Tempe has rights to water stored in the new conservation storage space at Roosevelt Dam.

The designation of critical habitat for the southwestern willow flycatcher has the potential to adversely affect those water resources. Tempe is concerned about potential areas being considered by the U.S. Fish and Wildlife Service for inclusion in the critical habitat designation, which may affect the operations of several reservoirs within the Salt River Project system. E48

The U.S. Fish and Wildlife Service will prepare a NEPA document (environmental assessment or environmental impact statement) that will consider reasonable alternatives for the designation of critical habitat for the southwestern willow flycatcher. Tempe urges PR32



the U.S. Fish and Wildlife Service to prepare an environmental impact statement instead of an environmental assessment as proposed in the Federal Register notice. The widespread geographic reach of potential southwestern willow flycatcher critical habitat across several southwestern states will have a significant economic impact to Cities, Indian Communities, and other water users that mandates preparation of an environmental impact statement.

PR 32

The socioeconomic impacts analysis of critical habitat designation must include impacts to the water supplies of Cities and Indian Communities. Adverse effects include potential change in reservoir operations and water deliveries with designation of reservoirs as critical habitat.

E 48

The U.S. Fish and Wildlife Service should evaluate the benefits provided to the southwestern willow flycatcher from mitigation lands included in existing special management plans, such as the Roosevelt Habitat Conservation Plan, and exclude the reservoir areas covered by the plan from critical habitat designation. For the Roosevelt Habitat Conservation Plan area and pending Verde Habitat Conservation Plan area, the U.S. Fish and Wildlife Service should evaluate designating the mitigation lands as critical habitat, but exclude the water storage reservoirs covered under these plans from critical habitat designation.

PR 14

In evaluating alternatives, the U.S. Fish and Wildlife Service should adequately address the variability in riparian habitat conditions by analyzing long-term hydrological records from the University of Arizona Tree Ring Research Laboratory and other sources to adequately characterize southwestern riparian habitat variability over time.

RV 3

Before using the Southwestern Willow Flycatcher 2002 Recovery Plan's "important stream reaches" as the basis for critical habitat designation, the U.S. Fish and Wildlife Service must evaluate the analyses, conclusions and scientific validity of the Recovery Plan and ensure peer review of the Recovery Plan when designating critical habitat.

CH 27

Thank you for considering our comments on the Notice of Intent to Prepare an Environmental Assessment for the Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher. Please send the draft environmental document and proposed rule to me at the address given above.

Sincerely,

*Eric S. Kamienski*

Eric Kamienski  
Water Resources Administrator